

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, S.I.,

Plaintiff,

V.

C.K., by and through R.K,
and JOSEPH FERNANDO,

Defendants.

Case No. 1:22-CV-00069-JAR

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's motion for judgment on the pleadings in this declaratory judgment action. (Doc. 35). The motion is unopposed and will be granted.

Plaintiff American Family Mutual Insurance Company seeks a declaration that it has no duty to defend or indemnify its policyholder, Defendant Dr. Joseph Fernando, in an underlying lawsuit (Doc. 29-1) alleging that he sexually abused a minor patient, Defendant C.K. The relevant insurance policies, attached to Plaintiff’s complaint, define an “occurrence” as an accident, not intentional conduct, and they expressly exclude coverage for liability arising from sexual molestation or misconduct by an insured. (Doc. 29, Exhibits 2-8).

Clerk's entry of default was entered as to C.K. on October 27, 2022. (Doc. 21). Fernando filed an answer to the complaint (Doc. 32) but did not file a response to the present motion. On August 9, 2023, the Court directed Fernando to show cause why Plaintiff's motion should not be granted. (Doc. 39). In response, Fernando states that he is unable to show why the motion should not be granted. (Doc. 40).

Judgment on the pleadings is appropriate “where no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law. *Poehl v. Countrywide Home Loans, Inc.*, 528 F.3d 1093, 1096 (8th Cir. 2008). The interpretation of an insurance policy is a question of law. *Capitol Indem. Corp. v. 1405 Associates, Inc.*, 340 F.3d 547, 549 (8th Cir. 2003).

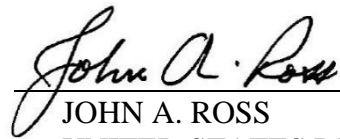
Upon review of the policy language, and for the reasons further set forth in Plaintiff’s unopposed brief (Doc. 36), the Court confirms as a matter of law that Fernando’s homeowner’s policies do not require Plaintiff to defend or indemnify him in the underlying lawsuit by C.K. No party suggests otherwise.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s motion for judgment on the pleadings is **GRANTED**. (Doc. 35).

A separate Judgment will accompany this Memorandum and Order.

Dated this 28th day of August 2023.

A handwritten signature in black ink, reading "John A. Ross", is written over a horizontal line.

JOHN A. ROSS
UNITED STATES DISTRICT JUDGE